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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

NO. 247

PASQUALE ALBANESE, *Appellant,*

v.

GRACE EVELYN PIERCE ET AL., *Appellees.*

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

MOTION TO DISMISS UNDER RULE 16.

DAVID GOLDSTEIN,
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Statute Cited:

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MOTION TO DISMISS.

The appellees respectfully pray that the appellant's appeal be dismissed for want of a substantial federal question.

STATEMENT OF CASE.

On the evening of September 28, 1952, the Rev. Dr. Gordon Pierce and his wife Grace E. Pierce, the appellees herein, visited the home of Dr. Clifford

Johnson in the Town of Newtown, Connecticut. During their social visit the Pierces parked their automobile in a parking area which was located well off the highway and was maintained by Dr. Johnson for the convenience of his guests and patients.

The appellant, Pasquale Albanese, on September 28, 1952, owned and operated Pat's Log Cabin in Newtown, a place where alcoholic beverages were sold and consumed on the premises. Sometime after 11 p.m. on that night, while the appellant was on the premises, Floyd F. Gilleo and his nephew Floyd H. Gilleo arrived at Pat's Log Cabin. Both of the Gilleos were in an intoxicated condition upon arrival. The appellant Albanese or his agents subsequently sold alcoholic drinks to the Gilleos while they remained at Pat's Log Cabin, and these drinks were consumed by the Gilleos on the premises.

The Gilleos left Pat's Log Cabin by automobile at about midnight. Floyd F. Gilleo was at the wheel with Floyd H. Gilleo riding as a passenger. They took a route which would cause them to pass the home of Dr. Johnson.

Also about midnight, the Pierces said goodnight to Dr. Johnson and entered their automobile which stood in the parking area. Mrs. Pierce took her position in the driver's seat, and the Rev. Dr. Pierce sat beside her. Before the Pierces' automobile was placed in motion by Mrs. Pierce and while it was still parked in the parking area, Floyd F. Gilleo, who was driving his car in an intoxicated condition, mistook the parking area of the Johnson home for an intersecting highway into which he was intending to turn.

He proceeded to swerve into the Johnson parking area striking the Pierce car, a heavy Oldsmobile, with a terrific impact which caused it to spin around 180 degrees.

Both of the appellees suffered serious injuries as a result of the collision. Mrs. Pierce received a basal skull fracture which caused a spinal fluid leak and eventually completely lost her senses of taste and smell. Dr. Pierce suffered severe injuries to his ribs and spine as well as lacerations requiring many sutures to close.

The appellees sued the appellant under Section 4307 of the General Statutes of Connecticut (1949 Revision). After trial to a jury, verdicts were returned in favor of Dr. Pierce in the amount of $10,000 and in favor of Mrs. Pierce in the amount of $25,000 and judgments were entered thereon. These judgments were affirmed by the Supreme Court of Errors of Connecticut.

STATUTE INVOLVED.

Section 4307 of the General Statutes of Connecticut (1949 Revision) is the so-called Dram Shop Act which reads as follows:

> Sec. 4307. Liquor seller liable for damage by intoxicated person. If any person, by himself or his agent, shall sell any alcoholic liquor to an intoxicated person, and such purchaser, in consequence of such intoxication, shall thereafter injure the person or property of another,

such seller shall pay just damages to the person injured, to be recovered in an action under this section.

QUESTION PRESENTED.

It is the contention of the appellant that Section 4307 is unconstitutional in that it deprives the appellant of property without due process of law and in that it denies him equal protection of the law in violation of the guarantees contained in the Fourteenth Amendment. The appellees contend, on the other hand, that no substantial federal question is raised by this appeal and, therefore, it should be dismissed. **Zucht v. King,** 260 U.S. 174 (1922).

THE APPEAL SHOULD BE DISMISSED AS IT RAISES NO SUBSTANTIAL FEDERAL QUESTION.

Section 4307, which has been on the statute books of the State of Connecticut in its present form since 1933, was enacted by the legislature as a remedial act. It is designed to establish a cause of action against the seller of intoxicating liquor upon proof of three essential factors: (1) that there was a sale of intoxicating liquor (2) to an intoxicated person (3) who, in consequence of such intoxication, causes injury to the person or property of another. **Duryea v. London & Lancashire Indemnity Company,** 143 Conn. 53, 57, 119 A. 2d 325 (1955). The legislature through Section 4307 created a new tort liability allowing recovery of "just damages" in a civil action upon proof of these three essentials by the plaintiff.

See **Staples v. Lucas,** 142 Conn. 452, 115 A. 2d 337 (1955).

The police power of the state is broad in scope. The legislature may under the police power enact any statute necessary to the promotion of the health and welfare of the community. Every statute so enacted, moreover, carries with it a presumption of constitutionality. The court cannot upon review substitute its judgment for that of the legislature. As long as the statute rests on some rational basis within the knowledge and experience of the legislators, it must be presumed constitutional. **United States v. Carolene Products Co.,** 304 U.S. 144 (1938).

In the area of control and regulation of alcoholic beverages the state police power runs especially broad and deep. **Mugler v. Kansas,** 123 U.S. 623 (1887); **Ziffrin, Inc. v. Reeves,** 308 U.S. 132 (1939). It is well established that states must be allowed to exercise these broad powers because of the many evils connected with the manufacture and sale of intoxicating liquors. A state may absolutely prohibit the sale of liquor. If it allows the sale of liquor, it grants a privilege to which it may attach regulations and conditions designed to safeguard the welfare of the community **Ziffrin v. Reeves,** supra. This Court has on numerous occasions upheld sweeping state liquor control regulations under the police power in spite of claims of unconstitutionality.

One such decision is **Crane v. Campbell,** 245 U.S. 304 (1917), in which the Supreme Court considered a statute making it illegal for a person to possess liquor even for his own personal use in certain

counties within the State of Idaho. In holding the act constitutional, the opinion of the Court stated at page 307:

> "It must now be regarded as settled that, on account of their well known noxious qualities and the extraordinary evils shown by experience commonly to be consequent upon their use, a State has power absolutely to prohibit manufacture, gift, purchase, sale or transportation of intoxicating liquors within its borders without violating the guarantees of the Fourteenth Amendment. **Bartemeyer v. Iowa,** 18 Wall 129; **Beer Company v. Massachusetts,** 97 U.S. 25, 33; **Mugler v. Kansas,** 123 U. S. 623, 662; **Crowley v. Christensen,** 137 U.S. 86, 91; **Purity Extract Company v. Lynch,** 226 U.S. 192, 201; **Clark Distilling Company v. Western Maryland Railway Company,** 242 U.S. 311, 320, 321; **Seaboard Air Line Railway v. North Carolina,** [245 U.S. 298]."

And once again in **Eigar v. Garrity,** 246 U.S. 97 (1918), the Supreme Court held constitutional a broad liquor control statute against a claim that it violated the fourteenth Amendment. This case involved an Illinois statute making the lessor of dram shop property liable for any judgment recovered against the lessee under the state dram shop act. The plaintiff obtained a judgment against the operator of a dram shop and sought under the statute to enforce the judgment against the landlord. The landlord claimed that he had no control over the activities of his lessee and he was not even engaged in the dram shop business. He contended that the liability

sought to be imposed upon him was not connected with any delict on his part and was unconstitutional.

This Court held the Illinois statute valid. The language which it used at pages 102 and 104 is appropriate to the present case:

> "The right of the States to pass laws for the regulation of the traffic in intoxicating liquors and to legislate with a view to repress the evil consequences which may result therefrom has been frequently affirmed in this court . . .
>
> In view of the broad authority of the States over the liquor traffic and the established right to prohibit or regulate the sale of intoxicating liquors, we are unable to discover that there has been a deprivation of property rights in the legislation in question in violation of due process of law secured by the Fourteenth Amendment."

This court has on many occasions, therefore, held that the states may, under their police power, impose restrictions on the liquor trade and traffic. The legislature of Connecticut could certainly have reasonably determined that anyone who sells liquor to an intoxicated person thereby endangers the welfare and safety of the community. This legislative determination should not be disturbed "unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators." **United States v. Carolene Products Co.**, 304 U.S. 144

(1938). The legislation here before the Court has a rational basis in fact and is clearly constitutional.

The appellees contend that an examination of the prior rulings of this Court, therefore, leaves no doubt that Section 4307 is a valid exercise of the state police power and in no way infringes the guarantees of the Fourteenth Amendment. The appellants have raised no substantial federal question in their appeal.

CONCLUSION.

The appellees respectfully pray that the appeal be dismissed.

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I hereby certify that on this day I caused a copy of the above Motion to Dismiss to be mailed, postage prepaid, to Attorney Charles A. Horsky, 701 Union Trust Building, Washington 5, D. C., said being his last known address.

Dated at Bridgeport, Conn., this 31st day of July, 1957.

DAVID GOLDSTEIN